

## SPS Commerce Inc – General Terms and Conditions

### 1. GENERAL

#### 1.1 Services

SPS will provide the products and services (“Products and Services”) at the prices set forth in the Scope and Proposal Document, change order, statement of work, or other written document used by SPS to offer products and services (“Scope”) which, in addition to these General Terms and Conditions which apply to all orders are expressly incorporated into the contract and constitute the full agreement between the parties (“Agreement”). The General Terms and Conditions shall govern all Products and Services provided by SPS, however, in the event of a conflict between the terms of the Scope and the Agreement, the terms of the applicable Scope shall control. SPS hereby rejects the inclusion of any different or additional terms proposed by the Customer. Any software or documentation included in a Product or Service is supplied only under license.

If SPS sends written notice to Customer and Customer does not thereafter reply to SPS in writing that the integrated fulfillment services specified in the applicable Scope are still to be completed, then SPS will no longer be obligated to perform those services after twelve (12) months.

#### 1.2 Nature and Scope of Services

The tasks, timelines, data types, volumes and pricing contained within the Scope are SPS’s estimates based upon the Customer’s representations and descriptions of the nature and scope of the project. In the event SPS determines that the Customer’s representations and descriptions are materially different than those found within the project or the Services, a material change will be deemed to have occurred. SPS reserves the right to adjust the schedule and price, with any such modifications subject to Customer approval, which shall not be unreasonably withheld or delayed.

### 2. SERVICE LEVELS AND ESCALATION PROCESS

SPS shall provide the Services in compliance with the service levels and escalation process set forth in the Service Level and Escalation Process document posted online at [www.spscommerce.com/servicesandtech/terms-and-conditions.html](http://www.spscommerce.com/servicesandtech/terms-and-conditions.html).

### 3. CUSTOMER RESPONSIBILITIES

Customer is responsible for all activity occurring under Customer’s accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer’s use of the Services, including those related to data privacy, international communications and the transmission of technical or personal data.

Customer shall be solely responsible for protection of its transmission facilities, premises, equipment, the integrity of its data entered on the Services, and its ID(s), password(s), user names and the like, or any other third party using the Services through Customer, from all unauthorized access or use. Customer shall use reasonable measures, commensurate with accepted industry standards, for such protection.

Customer shall provide SPS with (a) all documents and data in a format as specified by SPS and (b) all reasonable assistance in the implementation and use of Products and Services.

All Customer requests for additional changes or deletion of a password must be in writing. Customer acknowledges that the internet, or any wide-area communication network (“WAN”) that may be utilized is not a secure or an error free network and that transmissions made on the internet or WAN may not be completed or may contain errors or omissions. The internet or WAN, or portions thereof, may also become inaccessible or inoperable, in whole or in part, at any time or from time to time.

Customer may not decompile, reverse engineer, modify, adapt, translate, prepare derivative works,

disassemble or otherwise attempt to discover the source code of the Services, nor will you allow others to do the aforementioned.

Customer is not authorized to copy for republication and dissemination any materials accessed by means of the use of the Products and Services, if such materials are identified as proprietary, confidential or the intellectual property of SPS or of any third party. Customer will not delete any proprietary, confidential or intellectual property rights notices from printouts of materials which are electronically accessed.

All of the information on the SPS Products and Services, including all text, graphics, software applications, videos and audio files and photos (collectively "Material") and all rights in the pages and screens displaying the pages are owned by SPS or affiliated entities or their licensors, and are protected by copyright or other intellectual property laws under United States laws and foreign laws. None of the Material may be copied, reproduced, distributed, republished, downloaded, displayed, posted, framed or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior written consent of SPS or the copyright owner.

## **4. PAYMENTS**

### **4.1 Charges and Payment of Fees**

Customer's obligation to pay on time is of the essence of these terms. Customer shall pay all fees or charges to Customer's account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments must be made in accordance with the monthly fee schedule. Customer must provide SPS with valid credit card or payment information as a condition to signing up for Services.

### **4.2 Payment Terms**

Upfront fees as specified in Schedule A are due upon signature of Scope. Upfront fees for additional Services are due upon signature of the additional Scope.

Monthly fees as specified in Schedule A begin the month of signature of Scope with Due on Receipt terms. Monthly fees for additional Services begin the month the Scope for such Services is signed with Due on Receipt terms.

### **4.3 Billing**

Customer agrees to provide SPS with complete and accurate billing and contact information. This information includes Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact. Customer agrees to update this information within 30 days of any change to it. If the contact information Customer has provided is false or fraudulent, SPS reserves the right to terminate Customer's access to the Services in addition to any other legal remedies.

If Customer believes Customer's bill is incorrect, Customer must contact SPS in writing within 90 days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

### **4.4 Taxes**

Customer shall be responsible for all taxes on Services, exclusive of taxes based solely on SPS' net income. Customer will reimburse SPS for all sales, use, or excise taxes assessed by any taxing authority, whether such taxes are invoiced initially to Customer or assessed retroactively based upon audits by any governmental taxing authority.

### **4.5 Past Due Invoices and Suspension**

Customers are invoiced on a monthly basis with Due on Receipt Terms. Balances for open invoices exceeding thirty days are considered past due. All past due invoices will accrue

interest at the rate of 1 ½% per month or such lesser rate if required by law. SPS reserves the right to suspend or terminate this Agreement, Services and/or Customer's access to Services if Customer's account becomes past due. Customer will continue to be charged for Services during any period of suspension. If Customer or SPS initiates termination of this Agreement or any Services hereunder, Customer will be obligated to pay the balance due on Customer's account computed in accordance with the Charges and Payment of Fees section above. Customer agrees that SPS may charge such unpaid fees to the credit card on file or otherwise bill for such unpaid fees.

If Services are suspended by SPS for non-payment of fees owed, a reactivation fee of \$100.00 will be charged to Customer when Services are reinstated.

#### **4.6 Collection Costs**

Customer agrees to pay SPS for all costs of collection, including reasonable attorney's fees, incurred in the collection of any past due accounts.

### **5 WARRANTY**

SPS warrants that all Services will be performed in accordance with industry standards and in a workmanlike and reasonably diligent manner consistent with professional standards of performance generally accepted within the industry to transmit and deliver the data furnished by the Customer in industry standard format. This warranty is given in lieu of all other expressed and implied warranties. SPS makes no other warranties of any kind, including but not limited to any implied warranties of merchantability, non-infringement, data accuracy, quiet enjoyment, or fitness for a particular purpose. Customer acknowledges that the services may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications, and Customer agrees that none of SPS and its suppliers is responsible for any delays, delivery failures, errors, security breaches or other damage resulting from such problems. Customer is responsible for taking appropriate precautions against damages to its operations, which could be caused by services defects, errors, interruptions, or malfunctions.

If data furnished by the Customer is lost, destroyed, or impaired ("Loss") through the sole negligence of SPS, then SPS' liability and Customer's sole remedy shall be that SPS will either (i) to the extent reasonably possible, restore Customer's data from SPS' archives if SPS is notified in writing of the Loss within sixty (60) days of the Loss, or (ii) if SPS is notified of the Loss beyond said sixty (60) day period, provide to the Customer a credit for the charges paid in connection with the transmission of the lost data.

The remedies set forth above are the exclusive remedies for any breach of warranty.

### **6 LIMITATION OF LIABILITY**

IN NO EVENT WILL SPS OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE FOR ANY FORM OF DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, CHARGEBACKS, LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL), OR OTHER DAMAGES RESULTING FROM OR IN CONNECTION WITH ANY SERVICES PROVIDED TO CUSTOMER UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR NEGLIGENCE, EVEN IF SPS OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS HAVE BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE.

This limitation of liability includes, but is not limited to, any damages caused by: (1) the integrity of the data supplied by Customer in Customer's transmission requests; (2) inaccurate calculations performed by use of the Product or Services supplied by SPS; (3) bar coding performed by third-party bar coding companies; or (4) fees, fines, or penalties assessed against Customer by any of Customer's trading partners for any reason, whether or not the fault of SPS.

## **7 DATA SECURITY AND PROTECTION**

### **7.1 Customer Data**

“Customer Data” means the EDI data transmitted by Customer to its trading partner through SPS. As between the Parties, Customer Data will be and remain the property of Customer. Neither SPS nor any of its subcontractors may possess or assert any lien or other right against or to Customer Data. Without limiting the generality of the foregoing, SPS shall restrict access to SPS resources to SPS Personnel strictly as necessary to perform its obligations under the Agreement.

### **7.2 Data Security**

SPS will establish and maintain safeguards against the unauthorized access or use, destruction, loss or alteration of Customer Data in the possession or control of SPS (or any of its subcontractors) which are no less rigorous than industry-standard measures and which are no less rigorous than those maintained by SPS for its own data of a similar nature.

## **8 TERM AND TERMINATION**

This Agreement shall become effective as of the Scope Effective Date or Date (as defined in the relevant Scope) and shall remain in full force and effect until it is terminated by one of the parties pursuant to the provisions of this Agreement.

Either party may terminate the Agreement and/or any portion of the Services effective at the end of any calendar month with written notice received not less than thirty (30) days before the termination date. Upon termination of this Agreement or Services, any licenses shall terminate upon the effective termination date. Customer shall remain obligated to pay for any license fees and transaction fees that were due prior to termination.

If at any time Customer is delinquent in payment or is otherwise non-compliant with this Agreement or the terms of use of any Product or Service, SPS may forego the thirty (30) day notice period and immediately revoke any rights or licenses and suspend or terminate this Agreement and/or any Services without prior notification.

## **9 MISCELLANEOUS**

Both parties may delegate any or all of their duties to subcontractors, subsidiaries or parent companies, provided that both parties will remain liable for their respective duties. Except in connection with the sale of significantly all of the stock or assets of Customer, Customer may not assign this Agreement or any of the rights under this Agreement without SPS' prior written consent. Any attempt to do so is void.

This Agreement may not be modified by Customer except in writing, signed by you and us. SPS reserves the right to amend the terms of this Agreement at any time upon thirty (30) days prior notice to the Customer.

Other than the obligation to make payments, neither party will be liable for its inability to perform to the extent caused by conditions beyond its reasonable control, including but not limited to: internet viruses, slowdowns or unavailability; environmental conditions at your Premises; your third-party provider or other contractors; labor disputes; perils; or other hazards.

The provisions in this Agreement concerning proprietary rights, payment, disclaimers of warranty and liability, termination, governing law, and any other provision that by its nature should survive termination shall survive termination of this Agreement.

If any portion of this Agreement is held invalid, such invalidity shall not affect the remaining portions of this Agreement.

Failure or delay by either of us to exercise any right, power, privilege or remedy will not constitute a

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waiver thereof. Any provision contained herein that by its nature could reasonably be construed to survive expiration of this Agreement shall so survive.

This Agreement shall be governed by and construed according to the laws of the state of Minnesota, without regard to its conflict of laws provisions. The exclusive jurisdiction and venue for any litigation arising out of or related to this Agreement shall be in the federal or state courts located in Hennepin County, Minnesota.